



REPUBLIC OF KENYA



**Kemei v Republic (Criminal Revision E118 of 2025)
[2025] KEHC 10580 (KLR) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10580 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E118 OF 2025
RN NYAKUNDI, J
JULY 21, 2025**

BETWEEN

LINUS KIPTOO KEMEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

M/s Sidi for the State

1. The applicant was charged of being possession of alcoholic drinks. The brief facts are on the 8th day of June 2025, at 0900hrs Tiret village, Turbo sub-county, within Uasin Gishu county, within the Republic of Kenya was found in possession of changaa with 20 litres in contravention of the Act 2010. He pleaded guilty to the offence convicted and sentenced to a fine of 13,000 in default three months imprisonment. He has now applied for his sentence to be reviewed and the remainder of the sentence of 1 month 29 days at Turbo police station

Decision

2. This application is based on the provisions of the criminal procedure code namely Section 357, 362, 364 as read with 382. *The constitution* also provides under Art 50 (2) (p) (q) as follows:
 - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law. if this Article requires information to be given to a person, the information shall be given in language that the person understands.



3. The same constitution in Art 50 (6) (a) (b) expressly states as follows: A person who is convicted of a criminal offence may petition the High Court for a new trial if-
 - a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
 - b. new and compelling evidence has become available.
4. This application is based on the social inquiry report dated 15th July 2025 carried out by the probation officer which contextualized the issues as follows:

Sources of information prison records, inmate families, community and the complainant
Current Home And Personal Circumstances

Linus Kiptoo Kemei is a father of seven children, he is married to Lilian Kemei a housewife. He owns two acres of land where the family resides. All his children are going to school. He is optimistic that the time he has been away from his family has not negatively affected things at home. His family has been visiting him at prison.

Assessment, Rehabilitation, And Re-integration:

Linus Kiptoo Kemei has behaved well in Prison since his sentencing. He has been involved in farming at the Prison Farm and has perfected his farming skills as a result.

He is a rehabilitated man now. Linus Kiptoo Kemei's reintegration will not be a challenge since his family has been with him since his sentencing and they are looking forward to his release from custody.

Offender's Attitude Towards Non-custodial Measures

In the several weeks Linus has spent in Prison, he has come to appreciate the importance of conducting himself within the confines of laws and regulations, he is therefore positive about non-custodial measures.

Recommendations

I therefore recommend that the offender serves the remainder of his sentence. 1 month 29 days by doing free community service work at Turbo Police Station.

5. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The sentence policy guidelines of the judiciary 2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:
 - a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.



- e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.
6. In a documented research by Chrispinus Adenya Aben entitled Factors Influencing Success of Non-Custodial Sentence in Kenya: A Case of Kilifi District in Kilifi County 2011. He made the following observations: First and foremost prison population around the world is increasingly placing enormous financial burdens on governments. There is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful to offenders, families and in the long term to the community (UNODC, 2006).
 7. It came out clearly from his research; Supervision is an essential component of community based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (Killinger GG and Cromwell P.F, 1990). "The law is without doubt a remedy for great evils, yet it brings with it evils of its own". (Subbrano V.C.G. 1993). There are three primary gateways in the criminal justice. The first is at the police at the initial stage of apprehension, the second is at the court after the determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence (Johnson R, 2003).
 8. Rule 8.2 of the Tokyo rules on non-custodial affirm that courts or sentencing authorities may dispose off cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and laxed supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offenders change. Community attitude, home environment is deterministic of offender's potential to change.
 9. Time has come to re-conceptualize the effectiveness of custodial sentencing to promote a clear, fair, uniform and consistent approach by all levels of courts. A theme of any review of sentence must not lose sight of the objectives and sentencing. Am of the consider view that an effective sentence must also serve to communicate to society that justice has been done and the wrong doer punished and denounced for his or her conduct. Generally speaking over time I have been involved in the practice of law as a trier of criminal cases they is no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.
 10. In the instance case am hopeful that the review of custodial sentence and substitution of it with that of community service at Turbo Police station will contribute towards promoting the domain of non-custodial sentence. The sentencing recommended by probation officer is that of 1 month 29 days being the balance of the custodial sentence. Orders accordingly.



SIGNED DATED AND DELIVERED VIA CTS THIS 21ST DAY OF JULY 2025

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R. NYAKUNDI

JUDGE

